SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-89

VIRGINIA W. LUCOM, Petitioner

v.

DAVID L. REID, etc., et al., Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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TABLE OF CASES

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STATEMENT OF THE CASE

Petitioner filed suit in the United States District Court for the Southern District of Florida, seeking Federal Court review of an allegedly improper Florida ad valorem real property tax assessment on a 545 acre tract of land in Palm Beach County, Florida.

The five count complaint was framed as a civil rights action under 42 U.S.C.A.1985, 1986, and

the Equal Protection clause of the United States Constitution. As relief, Petitioner sought to enjoin the tax sale of the property, the award of damages, declaratory relief and further injunctive relief. All defendants filed, among other motions, motions to dismiss raising the Tax Injunction Act. Upon consideration of the motions and briefs of all parties, the District Court dismissed plaintiff's suit, grounding said dismissal on the Tax Injunction Act.

Upon appeal to the United States Court of Appeals for the 5th Circuit, the Court of Appeals by per curiam opinion affirmed the judgment of the District Court.

ARGUMENT

1. THERE IS NO CONFLICT AMONG THE CIRCUITS

Petitioner contends that the decision below is in conflict with the opinion of the Third Circuit Court of Appeals in Bamford v.Garrett, 538 Fed.2d 63. The decision below in no way conflicts with Bamford. The factual situation in Bamford is a pole apart from the present case. In Bamford a group of property owners for themselves and for a class of similarly situated taxpayers alleged discrimination in the assessment procedure in a Pennsylvania County and sought a review and supervision of assessment procedures in the future to prospectively prevent the alleged discrimination. In Bamford the 3rd Circuit conceded that this was, in fact, a suit that would be within the prohibition contained in the Tax Injunction Act, provided that Pennsylvania afforded a "plain, speedy and efficient

remedy". The Court held that because of the uncertainty of Equity Jurisdiction in Pennsylvania under decisions of the Pennsylvania Supreme Court it could not be said that the Plaintiff's equitable remedy was "plain, speedy and efficient". Further Pennsylvania's statutory remedy would require a multiplicity of individual suits attacking individual assessments and thus the statutory remedy was not "plain, speedy and efficient".

In the present case, Florida Statutes afford a plain, speedy and efficient remedy for a taxpayer, such as petitioner, who claims an excessive assessment. Carson v.City of Fort Lauderdale, 293 F.2d.337 (5th Cir.1961). The multiplicity of suit question involved in Bamford does not exist in the present case.

2. THE DECISION BELOW DOES NOT VIOLATE THE USUAL AND NORMAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

Petitioner's complaint filed in the District Court is an action to enjoin, suspend or restrain the assessment, levy or collection of a tax under the Laws of the State of Florida.

The mere allegation that it is a civil rights suit rather than a tax injunction suit will not prevent 28 U.S.C.1341 from divesting the Court of jurisdiction. Hickman v.Wujick, 488 F.2d. 875 (2d Cir.1973); Bland v.McHann, 463 F.2d. 21 (5th Cir.1972).

Petitioner's claim for money damages is

insufficient to avoid the jurisdictional bar of 28 U.S.C.1341. Evangelical Catholic Communion, Inc.v.Thomas, 373 F.Supp.1342 (D.Ver.1973).

Thus, accepting as true all of the material allegations of the complaint, it is readily apparent that this entire action is inextricably entangled with Florida's tax law. Where that is true, Federal Courts are without subject matter jurisdiction by the statutory mandate contained in 28 U.S.C.1341.

3. THE DECISIONS OF THE SUPREME COURT OF FLORIDA DO NOT CONTRADICT THE STANDARDS SET BY THIS COURT IN Sioux City Bridge Co. v.Dakota County, 260 U.S.441

Petitioner argues that Florida does not follow the law as set forth by this Court in Sioux City Bridge Co. v.Dakota County, 260 U.S.441 and that for this reason Florida's remedy for an alleged over-assessment is not "plain, speedy and efficient". This argument is just not valid.

The decisions of the Florida Courts recognize and follow the standards set forth by this Court in Sioux City Bridge Co., v.Dakota County, 260 U.S.441. In Sioux City, supra, the plaintiff alleged that the defendant County Assessor and defendant County Board of Equalization intentionally and arbitrarily assessed the Bridge Company's property at 100% of its true value and all the other real estate and its improvements in the county at 55%. (Emphasis supplied).

In Sioux City, supra, this Court then stated the principle to be applied in the following terms:

> "This Court holds that the right of the taxpayer whose property alone is taxed at 100% of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute."

Dade County v. Salter, 194 So.2d.587 (Fla.1966) holds that relief will be granted to a taxpayer who alleges that there is a systematic assessment of all property at a lower percentage of full value than the percentage of full value attributed to his property. The Florida Supreme Court cited Sioux City, supra, which holds to the same effect, that is, that where all others are assessed at less than 100% of value, the taxpayer is entitled to relief. The Sioux City decision involved a factual situation where all other properties were being assessed at a lower rate, not just some, as petitioner contends here.

The Florida Supreme Court in Southern Bell Tel.& Tel.Co. v. County of Dade, 275 So.2d.4, (Fla. 1973) again recognized and followed Sioux City and Township of Hillsborough v. Cromwell, 326 U.S.620. Again in 1976, the Supreme Court of Florida recognized the Sioux City principle in Deltona Corp.v.Bailey, 326 So.2d.1163 (Fla.1976) although the case was distinguished on other grounds.

In none of the cases cited by petitioner did the plaintiff allege facts to bring the case within the Sioux City rule. In Spooner v.Askew, 345 So.2d. 1055 (Fla.1976) plaintiffs admitted uniformity and

equality within their taxing unit and among themselves. In Cosen Inv.Co.,Inc. v.Overstreet, 17 So.2d 788, there was no allegation that plaintiff's property alone was taxed at full value, as was the case in Sioux City.

It is thus clear that Florida does adhere to the principles announced in the Sioux City case. However, petitioner has failed to avail herself of her remedy in the Florida Courts.

4. FLORIDA LAW PROVIDES A "PLAIN, SPEEDY AND EFFICIENT REMEDY".

Florida law provides a "plain, speedy and efficient" remedy to review the actions of the property appraiser and to correct any errors be they of omission or commission. This was clearly stated in the opinion below and, indeed, the Fifth Circuit has previously held that Florida provides a "plain, speedy and efficient remedy" within the meaning of 1341. Carson v. City of Fort Lauderdale, 293 F.2d 337 (5th Cir.1961).

The record fails to show any attempt by petitioner to seek relief from the alleged designation of petitioner's land as a "park". Petitioner has failed to pursue her remedies in the Courts of Florida under either the zoning laws or the laws of condemnation just as she has failed to avail herself of the "plain, speedy and efficient remedy" to attack the assessment.

CONCLUSION

Petitioner's complaint in the District Court is an action to enjoin, suspend or restrain the assess-

ment, levy or collection of a tax under the laws of the State of Florida.

Petitioner's remedy in the Courts of Florida is "plain, speedy and efficient".

The decision below does not conflict with the applicable decisions of this Court nor does it conflict with the decision of another Court of Appeals, nor has there been any departure from usual and normal course of judicial proceedings as to call for an exercise of this Court's power of supervision.

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the Respondent's Brief in Opposition have been furnished, by mail, this 11th day of August, 1977, to the following:

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